

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2013-35522
Issue No.: 2009
Case No.:
Hearing Date: July 31, 2013
County: Wayne DHS (15)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on July 31, 2013, from Detroit, Michigan. Participants included the above-named claimant. Participants on behalf of Department of Human Services (DHS) included , Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On /13, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On /13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On /13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On /13, Claimant requested a hearing disputing the denial of MA benefits.

6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-6) at the hearing.
9. On [REDACTED]/13, an Interim Order was issued giving Claimant 60 days from the date of hearing to submit psychological treatment documents.
10. On [REDACTED]/13, Claimant submitted psychological treatment documents (Exhibits B1-B15).
11. On [REDACTED]/13, an updated medical packet was forwarded to SHRT.
12. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
13. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'2 ½" and weight of 175 pounds.
14. Claimant has a history of heroin and cocaine abuse though she stopped using approximately [REDACTED]/2013.
15. Claimant's highest education year completed was the 10th grade.
16. As of the date of the administrative hearing, Claimant had no medical coverage, but received some free prescriptions from a pharmacy.
17. Claimant alleged disability based on impairments and issues including cervical and lumbar back problems and bipolar disorder.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources

such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 income limit is \$1010/month.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe

impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

Prescription notes (Exhibits A5-A6) dated [REDACTED]/10 were presented. One note stated "Home assistance with household chores" due to motor vehicle accident. A second note stated that Claimant was presently disabled for one month due to neck problems from a motor vehicle accident.

Hospital bills (Exhibits A1-A3) from dates of service from [REDACTED]/2010 were presented. The documents noted diagnoses including cervicalgia, back problems and neck sprain/strain.

Prescription notes (Exhibits A4-A5) dated [REDACTED]/10 were presented. One note stated "continue with home assistance for one month". The second note stated "continue disability for one month".

Two additional prescription notes were presented. An undated note (Exhibit A5) stated that Claimant was to be off of work for four months. A prescription note dated [REDACTED]/11 referenced home health aid but the remainder of the note was illegible.

A Psychiatric/Psychological Examination Report (Exhibits 8-10; B10-B12) was presented. It was noted that the form was based on an initial examination from [REDACTED]/12. It was noted that Claimant appeared unkempt, anxious and irritable. A diagnosis of bipolar disorder was noted. Claimant's GAF was noted as 45.

A Psychiatric Evaluation (Exhibits 18-25) dated [REDACTED]/12 was presented. Most of the cited information duplicated the Psychiatric/Psychological Examination Report. It was noted that Claimant had intact judgment and fair insight. It was noted that Claimant's impulse control was under control. It was noted that Claimant denied current suicide ideation.

A Mental Residual Functional Capacity Assessment (Exhibits 16-17) based on a 5/29/12 examination was presented. It was noted that Claimant was markedly limited in understanding detailed instructions. It was noted that Claimant was markedly restricted in 5 of 8 listed concentration work abilities including the following: maintaining attention

and concentration for extended periods, performing activities within a schedule while maintaining regular attendance and punctuality, working in coordination with others and the ability to complete a normal workday without psychological interruption. The examining physician also found Claimant markedly restricted in 2 of 5 social abilities.

A Case Management Assessment (Exhibits 11-15) dated [REDACTED]/12 was presented. The assessment was noted as performed by a licensed social worker. It was noted that Claimant wanted help finding employment and to obtain a GED; it was also noted that Claimant filed for SSA benefits based on disability. It was noted that Claimant reported chronic back pain, tooth pain and a need for glasses. Psychological symptoms reported by Claimant included racing thoughts, depressed mood, crying spells, sleeping difficulties, limited motivation and auditory hallucinations. It was noted that Claimant reported two suicide attempts, once when she was 18 and once in 2010. A history of drug abuse was noted including alcohol, crack and heroin, noted as most recently used in [REDACTED]/2012.

An internal medicine consultative examination report (Exhibits B1-B9) dated [REDACTED] 13 was presented. It was noted that Claimant reported complaints involving bipolar disorder, pinched nerve in the left leg, back problems, arthritis and muscle spasms. It was noted that Claimant reported being in a motor vehicle accident in 2010; it was noted that a hospitalization, physical therapy and pain management followed. It was noted that an MRI of Claimant's back dated [REDACTED]/10 showed no significant stenosis of the cervical spine. It was noted that Claimant does not use a walking assistance device. It was noted that Claimant performed walking slowly. The examining physician noted an impression of bipolar disorder; the examining physician also noted that Claimant was medication compliant and received ongoing treatment. An impression of a pinched left leg nerve and chronic back pain and arthritis with muscle spasms was also noted. The examiner noted that Claimant requires pain management but there was no evidence of neurological disorganization or joint instability. It was noted that Claimant may have difficulty with repetitive heavy bending, pushing, pulling and lifting. It was noted that Claimant sits, stands, bends, stoops and lifts with pain.

A Mental Impairment Questionnaire (Exhibits B13-B15) dated [REDACTED]/13 was presented. The form was signed by a treating physician who noted that Claimant was first evaluated on [REDACTED]/12 and last examined on [REDACTED]/13. It was noted that Claimant attended twice per month therapy sessions since [REDACTED]/12. Diagnoses included polysubstance dependence, bipolar disorder and other anxiety. It was noted that prescribed medications included Abilify, Adderall, Cogentin and Trazodone. It was noted that Claimant was unable to meet competitive standards in the following abilities related to unskilled work: maintaining attention for two hour segments, working in coordination with others, completing a normal workday without interruption from psychological symptoms, accepting instructions while responding appropriately to criticism and getting along with coworkers without unduly distracting coworkers. It was noted that Claimant had a limited attention span and had interpersonal difficulties. It was noted that Claimant had poor boundaries and often shares beyond the expectations of normal conversation. It was noted that Claimant had a history of isolating and relapsing into severe

depression during stressful periods. Claimant's GAF was noted as 45. A guarded prognosis was noted.

Claimant alleged that she is disabled, in part, based on exertional restrictions. Claimant testified that she has walking difficulties and needs a walking assistance device. Claimant testified that she is unable to walk up or down stairs.

The consultative examination from [REDACTED]/2013 tended to verify some exertional problems. The examiner cited that Claimant would have difficulty with repetitive heavy bending, pushing, pulling and lifting due to exertional restrictions.

There was evidence of neck injuries from 2010, but it is not clear if those injuries affect Claimant in 2013. Radiography verifying a neck injury was not presented, but one was referenced by a consultative examiner. The examiner noted no stenosis was found in the 2010 dated MRI. Though it is reasonably possible that Claimant has ongoing neck pain, Claimant failed to verify a basis for the pain.

Claimant alleged physical problems but there appeared to be minimal pursuit of treatment. Claimant did not present hospitalization documents. It is appreciated that Claimant lacks health insurance, however, it is also expected that if Claimant's impairments are sufficiently painful that some type of treatment would have been pursued, either through free clinics or the emergency room.

Claimant also alleged disability, in part, based on psychological symptoms. Claimant testified that she has daily crying spells and difficulties with concentration.

The evidence tended to establish psychological restrictions. It was verified that Claimant attended psychological treatment, at least for a one-year period from [REDACTED]/2012 through 7/2013. Claimant's treating psychiatrist noted numerous concentration and social function restrictions in performing work-related abilities.

Based on the presented evidence, Claimant established non-exertional restrictions to performing basic work activities. The restrictions are found to have existed since [REDACTED]/2013 and to have lasted for at least 12 months.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be symptoms related to bipolar disorder. Claimant's reported symptoms appear to be most relevant to the listing for affective disorder which reads as follows:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
 1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Starting with Part A, the presented evidence established that Claimant reported symptoms including: anhedonia, sleep disturbance, decreased energy and difficulty concentrating. It is found that Claimant meets Part A of the listing for affective disorders.

Turning to Part B, Claimant failed to verify any episodes of decompensation (i.e. psychological hospitalizations) or particular difficulty in performing daily activities. Thus, Claimant could only meet Part B if marked restrictions in social functioning and concentration are present.

SSA states the following in the mental disorder listings about how what defines a marked restriction:

Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis.

Claimant's treating psychiatrist provided a list of 24 work-related abilities and noted Claimant's psychological capability to perform each ability. The documents listed five different levels of restriction- ranging from "unlimited or very good" to "no useful ability to function". Claimant was found to have some ability to function in all 24 listed abilities.

Listed social abilities included: working in coordination with others, accepting instruction and responding appropriately to criticism and getting along with coworkers; Claimant was found unable to meet the competitive standards for each of these abilities. Claimant was also found "seriously limited" in the ability to interact with the public. The restrictions are consistent with marked restrictions.

Listed concentration abilities included: maintaining attention for two hour segments, completing a workday without psychological interruptions. Claimant was found to be unable to meet competitive standards in these abilities. Claimant was also found to be "seriously limited" in the ability to maintain socially appropriate behavior, understanding simple instructions and carrying out simple instructions. These restrictions are consistent with marked restrictions.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*. Based on the presented evidence, Claimant's treating psychologist provided work restrictions for Claimant which were consistent with the medical evidence. Based on the assessments provided by the treating source, it is found that Claimant meets the requirements for affective disorders and is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA benefit application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED]/13;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/2/2013

Date Mailed: 12/2/2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or

reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

